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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198660
Party	Plaintiff Broadcom Corporation
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Broadcom Corporation, Opposer, v. Broadchip Technology Group Ltd, Applicant.	Opposition No. 91198660 Subject Mark: BROADCHIP Application: 77/855,572

OPPOSER'S REPLY IN SUPPORT OF MOTION

FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Broadchip's response to Broadcom's motion fails, and the Board should rule in Broadcom's favor. First, Broadchip admitted facts sufficient to establish a likelihood of confusion. That Broadchip did not also admit those facts in a deposition is irrelevant. Second, that the Chinese Trademark Office ("CTMO") granted Broadchip's application is misleading and irrelevant. The CTMO denied most of the goods for which Broadchip sought registration, and the few goods that the CTMO allowed are not at issue here. In any event, the decision of the CTMO is not binding on the U.S. Trademark Office. Finally, despite ample opportunity for nearly five years, Broadchip has failed to retain counsel. Therefore, the Board need not afford Broadchip any more concessions and should grant Broadcom's motion.

II. BACKGROUND

On June 24, 2016, Broadcom moved for summary judgment that a likelihood of confusion exists between Broadcom's BROADCOM mark and other BROAD-inclusive marks ("Broadcom Marks") and Broadchip's BROADCHIP mark. TTABVUE Dkt. #19. On July 20, 2016, Broadchip opposed Broadcom's motion, and also requested additional time to retain counsel. TTABVUE Dkt. #20. On July 29, 2016, the Board suspended the proceedings until August 22, 2016 to provide Broadchip additional time to do so. TTABVUE Dkt. #22. Nevertheless, on August 23, 2016, Broadchip informed the Board that it has not retained counsel. TTABVUE Dkt. #23. As the proceedings have now been resumed pursuant to the Board's July 29, 2016 Order, Broadcom files this Reply Brief.

III. ARGUMENT

A. Broadchip admitted facts sufficient to establish a likelihood of confusion.

Broadchip states that it never admitted the facts in Broadcom's requests for admissions "by written or oral deposition." Opp. at 1. This is irrelevant. Broadchip does not dispute that it

failed to respond to Broadcom's requests for admissions. That failure deems the facts therein admitted and conclusively established as a matter of law.[1] Fed. Rule of Civ. P. 36(a)(3); TBMP § 407.04 ("Any matter admitted (either expressly, or for failure to respond) under Fed. R. Civ. P. 36 (a) is conclusively established ...."). The Board has also acknowledged as much. TTABVUE Dkt. #18 n. 2.

Broadchip's admissions establish a likelihood of confusion between Broadcom's Marks and Broadchip's BROADCHIP mark. In particular, Broadchip admitted that (1) its BROADCHIP mark is likely to cause confusion with Broadcom's Marks, (2) Broadcom's Marks are famous in the United States and entitled to a broad scope of protection, (3) the BROADCHIP mark is highly similar in appearance, sound, and commercial impression to Broadcom's Marks, (4) the parties' goods and services overlap, (5) the parties' trade channels, customers, and industries overlap, (6) Broadchip intended to ride off of Broadcom's goodwill, and (7) there has been actual marketplace confusion. Motion for Summary Judgment at pp. 12-21.

Because Broadchip has admitted these facts, the Board should enter summary judgment in Broadcom's favor. Both the Board and courts have held that a failure to respond to requests for admission can serve as the factual predicate for granting a motion for summary judgment. *See, e.g., Click and Park, LLC v. Park On Line, Inc.*, Cancellation No. 92049573 (T.T.A.B. Sept. 24, 2009) [non-precedential] (granting summary judgment to petitioner on likelihood of confusion

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[1] Therefore, Broadchip's reference to its attempt to schedule its deposition is also irrelevant. Broadchip's story is also misleading. Broadchip states that, after the Board's June 2, 2016 Order resuming proceedings, "Broadchip immediately contacted the Opposer to set the deposition date through phone call and email. But we don't [sic] get any answer from Opposer until June 22, 2016 that the Opposer e-mail [sic] us back that they will file the motion for summery[sic] judgment."

In reality, Mr. Jerry Dai from Broadchip informed Opposer's counsel on June 6 that he would be available for deposition in Palo Alto only the next two days (June 7-8), and that he would not be available again until after the close of discovery. Especially given that Broadcom's counsel would need to fly to Palo Alto, Broadchip's "offer" lacked proper notice and was unworkable and unreasonable.

claim based on pro se respondent's default admissions); *U.S. v. Kasuboski,* 834 F.2d 1345, 1350 (7th Cir. 1987) (affirming summary judgment that was based on admissions). Moreover, Broadchip cannot base its opposition on arguments or facts inconsistent with its admissions. *Click and Park,* at p. 9; *Kasuboski,* 834 F.2d at 1350 ("[A] party cannot attack issues of fact established in admissions by resisting a motion for summary judgment"); *see also* FED. R. CIV. P. 56(c) (explaining that a party cannot merely rely upon allegations or denials in pleadings and briefs to survive summary judgment, but must set forth specific facts, by way of affidavit or otherwise, showing there exists a genuine issue of material fact for trial).

B. Broadchip's Chinese registration is irrelevant.

Broadchip misleadingly states that its mark registered with the CTMO. Opp. at 1. In reality, Broadcom successfully opposed most of the goods in the Chinese application. The few goods that the CTMO allowed are not at issue in this case.[2] In addition, CTMO refused goods, such as semiconductors and computer chipsets that Broadchip seeks to register here.

In any event, the decision of the CTMO is not binding on the U.S. Trademark Office. Nevertheless, as Broadcom stated in its motion, Broadchip's repeated filing for the same B BROACHIP mark in China after losing the opposition demonstrates Broadchip's bad faith.

C. Broadchip's failure to retain counsel should not delay the Board's decision on this motion.

Broadchip has had ample opportunity to retain counsel. In September 2011, nearly five years ago, Broadchip's counsel withdrew. TTABVUE Dkt. #5. The next month, Broadchip

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[2] The CTMO allowed "sensor; low-voltage power supply; stabilized voltage power supply."

notified the Board that Broadchip had decided to represent itself. TTABVUE Dkt. #7. Throughout the process, Broadcom and the Board have given Broadchip ample opportunity to comply with its discovery obligations and seek new counsel. TTABVUE Dkt. ##6, 8, 13, 18, 22. In fact, as Broadchip acknowledges, Broadcom gave Broadchip advanced warning that Broadcom would file its motion for summary judgment. Opp. at 1. And the Board granted Broadchip's request, made in its opposition to Broadcom's motion, to suspend proceedings to allow Broadchip to retain counsel. TTABVUE Dkt. #22.

Broadchip, however, has still not retained counsel. TTABVUE Dkt. #23. Its continuous pattern of delay warrants that the Board rule on Broadcom's motion as briefed.

IV. CONCLUSION

The undisputed facts and admissions establish a likelihood of confusion, mistake and deception between Broadcom's Marks and Broadchip's BROADCHIP mark. Therefore, Broadcom is entitled to summary judgment on its Section 2(d) claim. Accordingly, Broadcom respectfully requests that the BROADCHIP application be refused registration and that the Board enter judgment for Broadcom.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 24, 2016

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPPOSER'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** upon Applicant by depositing one copy thereof in the United States Mail, first-class postage prepaid, on August 24, 2016 addressed as follows:

JERRY DAI
BROADCHIP TECHNOLOGY GROUP LTD
5653 ORA ST
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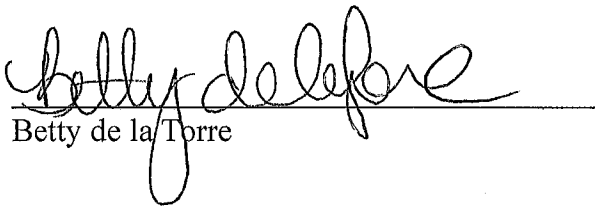
UNITED STATES



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